

Judge: Hon. Christopher M. Alston
Chapter: Chapter 7
Hearing Date: September 20, 2019
Hearing Time: 9:30 a.m.
Hearing Site: 700 Stewart St., #7206
Seattle, WA 98101
Response Date: September 13, 2019

UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re:

Case No. 18-14820

SAMIA EL-MOSLIMANY,

Debtor.

TRUSTEE'S OBJECTION TO DEBTOR'S MOTION FOR
ABANDONMENT OF RESIDENCE

RONALD G. BROWN, the Chapter 7 Trustee ("Trustee"), by and through his undersigned counsel objects to the Debtor's Motion to Compel Abandonment of her Residence for the reasons set forth below.

The Debtor seeks to compel the Trustee to abandon real property located at 2655 SW 151st Place, Burien, Washington ("Residence"). The Trustee believes that there is equity in the Property, even if the second position deed of trust is valid, and as such the motion should be denied. Alternatively, the Trustee submits that the court cannot determine that the property is of no benefit or unduly burdensome to the estate until it determines the validity and amount of the second position deed of trust granted to Aziza Yousef ("Ms. Yousef").

Trustee's Complaint to Avoid second position deed of trust granted to Aziza Yousef

The Trustee filed a complaint on September 12, 2019 seeking to avoid the second position deed of trust granted to Aziza Yousef which is proceeding under Adversary Proceeding No. 19-01116. As a second cause of action, the Trustee also seeks to prevent Ms. Yousef from adding any post-petition transfers to the final balance owed to her, as all post-petition advances were made without court approval.

1 The Trustee incorporates the Complaint in Adversary Proceeding No. 19-01116 and all
2 twenty-two exhibits attached thereto into this response as though fully set forth herein.

3 **The Debtor stated she had no bank accounts.**

4 Schedule A/B Question 17 requires the debtor to disclose all checking savings and other
5 financial accounts she maintains. She indicated she had none. Thus, the Debtor's sworn
6 statement is that she does not have a single bank account anywhere. In answer to question 20 on
7 her Statement of Financial Affairs she indicates that all of her bank accounts were closed or
8 frozen between June of 2017 and July of 2018. The only U.S. bank accounts disclosed were
9 maintained at Key Bank and Washington Federal and, according to her sworn statement, those
10 have been closed since July, 2018 and August, 2018 respectively.

11 **Ms. Yousef's Deed of Trust and Promissory Notes**

12 **Problems with Ms. Yousef's Deed of Trust and Alleged Advances**

13 According to the Debtor's Motion there were three promissory notes executed:
14

- 15 1. September 1, 2016 - \$346,666.00 ("2016 Promissory Note")
16 2. May 28, 2017 \$100,000.00 ("2017 Promissory Note")
17 3. July 25, 2019 \$ 26,666.00 ("2019 Promissory Note")
18
19 Total \$ 473,332.00

20 The Debtor's schedules list the amount owing on Ms. Yousef's deed of trust as \$500,000.00.
21 In her Motion, the Debtor now claims that the amount she owes to Ms. Yousef is not the
22 \$473,332.00 set forth in the Promissory Notes, nor is it the \$500,000.00 she listed as owing on
23 Schedule D of her bankruptcy schedules, but it is now \$574,537.00, because Ms. Yousef advanced
24 another \$101,690.00 on some unstated date or dates for which no promissory note was prepared
25 or executed. Thus, the Debtor contends there are four separate alleged transfers of funds from Ms.
26 Yousef to her.
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1 The Debtor produced a declaration from herself and Ms. Yousef. The Declarations and
2 documents attached thereto are analyzed as set forth below.

3 **Transfer of \$346,666.00**

- 4 1. Both the Debtor and Ms. Yousef state that Ms. Yousef lent 1,300,000 Riyals (\$346,666.00
5 US) to the Debtor. In paragraph 8 of her declaration, Ms. Yousef states that the entire
6 \$346,666.00 was lent on September 1, 2016. There are no documents attached to her
7 declaration showing the transfer of \$346,666 from her to the Debtor on September 1,
8 2016, or on any other date. There is simply no documentation attached to her
9 declaration to support this statement.
10
11 2. The Debtor, on the other hand, testified at her §341 meeting that the \$346,666.00 was
12 lent over the course of the past couple of years and her accounting advanced to her by
13 Ms. Yousef is not very accurate. McKee Declaration, docket #76, page 28 and 29. There
14 are no documents submitted by the Debtor showing any money she received from Ms.
15 Yousef on or before September 1, 2016.
16

17 **\$100,000.00 Transfer on May 28, 2017**

- 18 1. Both the Debtor and Ms. Yousef state in their declarations that Ms. Yousef lent the
19 Debtor \$100,000.00 US on May 28, 2017. To support this statement, Ms. Yousef refers
20 to Exhibit B¹ attached to the Debtor's declaration. Exhibit B appears to be an internal
21 report likely prepared by the Debtor as the caption is "Newest Loan from Aziza".
22 According to Exhibit B all of the alleged loans from Ms. Yousef were wired by Sara A.S.
23 Alhaidar but it does not say to whom the funds were wired or into what account they
24 were deposit. But more interesting, is the fact that the same report shows that as of June
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28 ¹ In her declaration, Ms. Yousef references Exhibit 2 to her declaration. There is no exhibit 2 since all
29 exhibits attached to her declaration are referenced by letters rather than numbers. As such the trustee
assumes that Ms. Yousef meant exhibit B rather than Exhibit 2.

1, 2017, three days after the alleged \$100,000.00 transfer, the balance owed by the Debtor to Ms. Yousef was only \$39,949.14.

2. The Debtor attached no documentation to support this \$100,000.00 transfer other than Exhibit B.

Newly claimed advance of \$101,690.00.

Both the Debtor and Ms. Yousef contend that Ms. Yousef gave the Debtor \$25,000.00 cash and wired her funds totaling \$76,690.00. Both parties admit there is no promissory note to evidence this transaction. Neither party states when these transfers occurred, so we have no idea if the transfers are pre or post-petition. There are two documents attached to Ms. Yousef's declaration which *may* relate to this obligation, but it is virtually impossible to tell.

1) Title ANB Net Transaction Receipt for account holder: Sara A.S. AlHaidar, account #² x0011 showing someone's utility bill was paid on September 28, 2017 in the amount of 280.00 Riyals ---\$75.08 USD.

2) ANB Net Transaction Receipt for Sara A.S. AlHaidar for same account #³, for payment of an unidentified entities utility bill in the amount of 454.28 Riyals--\$121.01 USD.

3) Bailey transfer. Exhibit C to the Debtor's declaration appears to be a money transfer showing \$12,000.00 on what appears to be October 30, 2018 with the remitter appearing to be Sarah AlHaidar, the beneficiary appears to be Don Bailey, the Debtor's counsel. However, Sarah AlHaidar is not Ms. Yousef and as such, it is not evidence of a loan from Ms. Yousef to the Debtor.

Post-Petition Advance of \$26,666

Both the Debtor and Ms. Yousef state that Ms. Yousef lent the Debtor \$100,000.00 Riyals (\$26,666.00 US) and there was a promissory note executed July 25, 2019 evidencing this transaction. They do not state when the transfer or transfers were made. The documentation attached which may relate to this obligation is as follows:

Screen shot, SAMBA acct #x1831, international transfer (net), 8,634.66, on March 13, 2019 (post-petition), transfer of USD 2300 @ 3.7542000 in favor of Rilla Ella

² Ms. Yousef should have redacted this number, so the Trustee is not using the entire number, just the last 4 digits.

³ Ms. Yousef should redact this account number as well.

1 Usman Al Haddar⁴ x2826 at Sound Credit Union, under our ref #0500300725609--
2 \$2300 USD. According to the Debtor's schedules, she has no open bank accounts in
3 the United States, or anywhere for that matter, and the only ones she ever had in the
4 U.S. were maintained at Key Bank and Washington Federal. This transfer is to an
5 account at a bank the Debtor never banked at, into an account which is not the
6 Debtor's, so it is not evidence of a loan to the Debtor.

7 From SAR currency to acct x2826 to USD currency, beneficiary is Rilla Ella Usman
8 Al-Haddar) \$5,300 USD; total amount debited SAR 19,949.76, reference # not visible
9 --\$5,300 USD. There is no date on the transaction document, nor is there any
10 indication as to whom the sender is or into what bank account it was transferred. In
11 any event, it was not a transfer to the Debtor.

12 There is a screen shot of a document with the number 100,000 on it but the
13 document is mainly in Arabic, so the Trustee does not know what it actually says.
14 Inexplicably, there is an English number which appears to be a date which may or
15 may not be January 8, 2019 or August 1, 2019. The previous translated Arabic
16 documents generally show the date/month/year not the month/date/year. It has
17 the Debtor's name, but we have no idea if the Debtor's name is as the transferor,
18 transferee, account holder, or just what part she plays. Nowhere on this document
19 does it state who is translating portions of it to English and why only portions have
20 been translated and not all of it. This document has absolutely no evidentiary value.

21 The Trustee believes that after carefully analyzing each document attached to Ms. Yousef's
22 and the Debtor's Declarations the Court can determine that:

- 23 1) There is no actual evidence of the transfer of any funds from Ms. Yousef to the Debtor
24 in the amount of \$346,666.00 on or before September 1, 2016.
- 25 2) Exhibit B, the document prepared by either Ms. Yousef or the Debtor is nothing more
26 than perhaps an internal accounting which is not proof of funds lent, and even if it was
27 it shows that all but approximately \$40,000.00 of the funds lent by Ms. Yousef to the
28 Debtor were repaid.
- 29 3) The only evidence the parties have submitted of any transfers show funds being
transferred to or by people that are not Ms. Yousef or the Debtor into unknown
accounts in an amount totaling \$7,796.08.

⁴ Ms. Yousef should have redacted this account number as well
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1 4) The 2019 Promissory Note was executed less than two months ago, and seven months
2 after the Petition Date and, thus, the Trustee believes that is an unauthorized post-
3 petition transfer that is avoidable pursuant to section 549 of the Bankruptcy Code and
4 should not be included in the total amount owing. If the 2019 Promissory Note is not
5 counted, the amount owing on the 2016 and 2017 Promissory Notes totals
6 \$446,666.00.

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8 5) There was no promissory note executed in relation to the newly claimed \$101,690.00
9 advanced and no statement as to when the funds were advanced and as such the
10 Trustee does not believe it should be included at all in the determination as to whether
11 there is equity in the Residence.

12 **Dispute as to Value of the Residence**

13 The value of the Debtor's Residence is in dispute. The Trustee's realtor has previously filed
14 a declaration indicating that the value of the Residence is between \$1,150,000 and \$1,200,000.00
15 and would recommend a list price of \$1,250,000.00. The Debtor contends the value is
16 \$1,130,000.00.
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18 **Abandonment of Property of the Estate**

19 Abandonment of Property of the Estate is Governed by §554 of the Bankruptcy Code which
20 provides as follows:
21

22 (a) After notice and a hearing, the trustee may abandon any property of the estate that is
23 burdensome to the estate or that is of inconsequential value and benefit to the estate.

24 (b) On request of a party in interest and after notice and a hearing, the court may order the
25 trustee to abandon any property of the estate that is burdensome to the estate or that is
26 of inconsequential value and benefit to the estate.

27 The party seeking abandonment must establish that: (1) the Property is either burdensome
28 to the estate; or (2) is of inconsequential value and benefit to the estate. *In re Sullivan & Lodge,*
29 *Inc.*, 2003 WL 22037724 at *4 (N.D. Cal. 2003); *In re Viet Vu*, 245 B.R. at 647. However, an order

compelling abandonment is “the exception, not the rule.” Id. (Citing *Morgan v. K.C. Mach. & Tool Co.* (*In re K.C. Mach & Tool Co.*), 816 F.2d 238, 245 (6th Cir. 1987). The only issue before the Court is whether the estate’s interest in the property “should be preserved or, instead, whether the property is so worthless or burdensome to the estate that it should be removed therefrom”. *In re K.C. Mach & Tool Co.*, 816 F.2d at 246.

The party seeking abandonment bears the burden of proof that the property is either burdensome or of inconsequential benefit and value and must prove that by a preponderance of the evidence. *In re Heil*, 41 B.R.112 (Bankr. N.D. Tex. 1992), *In re Alexander*, 289 B.R. 711 (8th Cir B.A.P. 2003).

The costs of sale that the Debtor included of her analysis of “equity” should not be considered pursuant to the 9th Circuit in the case of *In re Hyman*, 967 F.2d 1316, 1320 (9th Cir. 1992).

Even if all three of the Promissory Notes are valid, there is still equity in the property and as such it is not of inconsequential value or burdensome to the estate as evidence by the charts below.

Using Debtor’s value and all 3 promissory notes:

Gross Value:	1,130,000.00
Less WA Fed’l Deed of Trust	355,437.00
Less Yousef Deed of Trust	473,332.00
Net Proceeds	301,231.00
Estate’s 50% share net proceeds	150,615.50
Less Debtor’s homestead exemption	125,000.00
Net Equity	25,615.50

Using R. Jones’ value and all 3 promissory notes

Gross Value:	1,200,000.00
Less WA Fed’l Deed of Trust	355,437.00
Less Yousef Deed of Trust	473,332.00
Net Proceeds	371,231.00
Estate’s 50% share net proceeds	185,615.50
Less Debtor’s homestead exemption	125,000.00
Net Equity	60,615.50

**Using Debtor's value excluding July
2019 promissory note**

Gross Value:	1,130,000.00
Less WA Fed'l Deed of Trust	355,437.00
Less Yousef Deed of Trust	446,666.00
Net Proceeds	327,897.00
Estate's 50% share net proceeds	163,948.50
Less Debtor's homestead exemption	125,000.00
Net Equity	38,948.50

**Using R. Jones' value excluding July 2019
promissory note**

Gross Value:	1,200,000.00
Less WA Fed'l Deed of Trust	355,437.00
Less Yousef Deed of Trust	446,666.00
Net Proceeds	397,897.00
Estate's 50% share net proceeds	198,948.50
Less Debtor's homestead exemption	125,000.00
Net Equity	73,948.50

Obviously, if the Trustee is successful in avoiding Ms. Yousef's Deed of Trust the amount of equity increases by at least \$446,666 or \$473,332.

The Debtor has not met her burden of proof and has not proven that the Residence is burdensome to the estate or of inconsequential benefit.

The validity of the second position deed of trust is in bona fide dispute.

The Trustee filed an Adversary Proceeding against Aziza and John Doe Yousef seeking to avoid her deed of trust as a fraudulent transfer. As such, the validity of the Deed of Trust is in dispute. The term "bona fide dispute" is most usually applied to involuntary cases or cases seeking to sell real property under section 363 of the Bankruptcy Code. The term "bona fide dispute" is not defined in the Bankruptcy Code, but case law is instructive. A trustee may sell estate property free and clear of a non-debtor's interest that is in "bona fide dispute." See *In re Gerwer*, 898 F.2d 730, 733 (9th Cir. 1990). In ruling on a motion to sell estate property free and clear under 11 U.S.C. § 363(f)(4), "a court need not determine the probable outcome of the dispute, but merely whether one exists." *In re Octagon Roofing*, 123 BR 583, 590 (Bankr. N.D. Ill. 1991), citing *In re Busick*, 831 F.2d 745, 750 (7th Cir. 1987), which addressed the meaning of "bona fide dispute" under 11 U.S.C. § 303. The parties must provide some factual grounds to show some objective basis for the dispute. *Union Planters Bank, N.A. v. Burns (In re Gaylord Grain L.L.C.)*,

1 306 BR 624, 627 (8th Cir. BAP 2004). And the disputed lien(s) need not be the subject of an
2 immediate or concurrent adversary proceeding. Gaylord, at 627. "The Court need not decide the
3 ultimate question of the validity of [the] lien here. It is enough for the purposes of § 363(f)(4) that
4 the record shows the objective existence of a bona fide dispute." *In re Kellogg-Taxe*, 2014 Bankr.
5 LEXIS 1033, *23 (C.D. Cal BK Ct. 2014) (emphasis in original).

6 In this case, the dispute is, in fact, subject to a concurrent adversary proceeding. And the
7 validity of Ms. Yousef's deed of trust is subject to a bona fide dispute.

8 **One-half interest of Ann Al-Moslimany**

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10 The Debtor argues that the Trustee will not be able to sell the house pursuant to Section
11 363 because of the one-half interest of Ann El-Moslimany. That issue is not before the Court and
12 should play no part in its consideration of the Debtor's Motion to Abandon.

13 **Where is the money?**

14 If the Debtor's version of the facts is accurate, then she received almost \$346,666 in 2016,
15 \$100,000.00 in 2017, and another \$101,690.00 at some unknown point in time for \$548,356.00
16 from Ms. Yousef in the three-year period prior to filing. This is exclusive of the other creditors
17 listed on her schedules who are not commercial lenders, who are not Dr. Sindi, and who appear to
18 be family members and friends making loans to the Debtor. This amount totals \$850,000.00
19 (Schedule E/F # 4.1, 4.2, 4.3, 4.5, 4.7, 4.12. 4.15, 4.16, 4.17, 4.19, 4.20, 4.21, 4.22, 4.23, 4.24, 4.26,
20 4.27, 4.28, and 4.29) which would bring the total amount of funds the Debtor has received in the
21 past few years to a staggering approximately \$1,400,000.00. Where are those funds? Further, how
22 were those funds dealt with since the Debtor's schedules indicate she has had no bank accounts
23 since mid-2018, almost a year and a half prior to filing? Lastly, while the Debtor contends that the
24 funds she borrowed from Ms. Yousef were used to pay her attorneys, her schedules list \$28,000.00
25 owed to attorney Elena Garella, and \$100,000.00 owed to Bonner Kiernan, her appellate counsel in
26 the Massachusetts lawsuit.
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1 **Conclusion**

2 The Trustee requests that this Court deny the Debtor's motion for abandonment because
3 even if Ms. Yousef's deed of trust is valid there is still equity in the Residence and as such is not
4 burdensome and certainly not of inconsequential benenfit to the estate. Abandonment is "the
5 exception, not the rule" The Debtor's Motion should be denied.

6 Dated this 13th day of September, 2019.

7
8 WOOD & JONES, P.S.

9
10 /s/ Denice E. Moewes

11 Denice E. Moewes, WSBA #19464

12 Attorney for Chapter 7 Trustee

13 Ronald G. Brown
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